IN THE SUPREME COURT

APPLICATION FOR LEAVE TO APPEAL FROM THE MICHIGAN COURT OF APPEALS

Judges Owens, P.J., and Fitzgerald and Schuette, JJ.

GEORGE H. GOLDSTONE,

Plaintiff/Appellant,

v

BLOOMFIELD TOWNSHIP PUBLIC LIBRARY,

Defendant/Appellee.
/

Supreme Court No. 130150

Court of Appeals No. 262831

Oakland County Circuit Court No. 04-060611-CZ

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MICHIGAN LIBRARY ASSOCIATION'S AMICUS CURIAE BRIEF

Dated: June 2, 2006

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JURISDICTIONAL STATEMENT

On November 8, 2005, the Michigan Court of Appeals issued *Goldstone* v *Bloomfield Twp Public Library*, 268 Mich App 642; 708 NW2d 740 (2005). On December 19, 2005, Plaintiff/Appellant filed a timely application for leave to appeal. On April 7, 2006, this Court issued an order directing the parties to file supplemental briefs and inviting the Michigan Municipal League and Michigan Library Association to file briefs amicus curiae. This Court has jurisdiction to review this case by appeal, or to take other action. MCR 7.301(A)(2); MCR 7.302(G)(1).

STATEMENT OF QUESTION PRESENTED

1. DOES DEFENDANT/APPELLEE BLOOMFIELD TOWNSHIP PUBLIC LIBRARY'S CHALLENGED LIBRARY POLICY VIOLATE CONST 1963, ART 8, §9?

Plaintiff/Appellee George Goldstone answers:	Yes
Defendant/Appellee Bloomfield Township Public Library answers:	No
The Oakland County Circuit Court answered:	No
The Court of Appeals answered:	No
Amicus Curiae Michigan Library Association answers:	No

INTRODUCTION

The Michigan Library Association ("MLA") is Michigan's oldest and largest library association, representing nearly 2,200 library members across the State. MLA supports the Court of Appeals' decision in *Goldstone* v *Bloomfield Twp Public Library*, 268 Mich App 642; 708 NW2d 740 (2005) as legally correct, and essential as a matter of policy.

Const 1963, art 8, § 9 provides that libraries shall be "available" to Michigan residents. They are. The system works. Const 1963, art 8, § 9 further provides that the availability of libraries shall be "under regulations adopted by the governing bodies thereof. This provision specifically authorizes the policy that Plaintiff challenges - Defendant/Appellee Bloomfield Township Public Library's (the "Library") policy of allowing non-Township residents to borrow books only if they live in a community that has a contractual relationship with the Library. The Library's policy is consistent with the Constitution, as well as similar policies of libraries across Michigan.

Pursuant to the well-reasoned and long-established constitutional and statutory scheme, libraries are open to all Michigan residents; however, the circulation of books may be limited by local rules and regulations. It is entirely appropriate - and necessary - to limit book borrowing in accordance with each library's contract(s) with surrounding communities. Otherwise, libraries would not be financially able make library services "available" to Michigan residents.

Plaintiff was able to borrow books from the Library until the community in which he lives did not renew its contract with the Library. He then brought this litigation claiming, among other things, a constitutional right to borrow books. Plaintiff's position fails as contrary to the plain language of Const 1963, art 8, § 9, which limits "availability" in accordance with local

regulations. Such local control was also plainly contemplated by the drafters of Const 1963, art 8, § 9, and the people who ratified it. Local control, including funding contracts and borrowing limits, was expressly considered as necessary in the creation and enactment of Const 1963, art 8, § 9.

Plaintiff's position should also be rejected for the same policy reasons that shaped the constitutional language and compelled its enactment. Michigan libraries rely primarily on local funding to make library services available to Michigan residents. Some additional funding is provided by library contracts with surrounding communities. This local regulation increases the availability of library services. Plaintiffs position, in contrast, would decrease that availability, because if any Michigan resident could borrow books from any library, then the library's ability to obtain funding would be undermined. Local taxpayers are unwilling to pay to have their local libraries deliver expensive statewide services. Funding contracts would become impossible because a library could not sell, and another community would not buy, services that must be provided for free as a matter of law. Nothing is really free, so library services would necessarily become less available due to a decreased ability of libraries to obtain funding. The plain language and intent of the Constitution would be undermined, to the detriment of Michigan's libraries and citizens. Accordingly, the MLA on behalf of its 2,200 library members, respectfully requests that this Court deny Plaintiff's application for leave to appeal.

STATEMENT OF FACTS

The MLA supports the Library's position and concurs in the Counter-Statement of Facts set forth in its Brief in Opposition to Appellant's Application for Leave to Appeal. The MLA also adopts by reference the facts set forth in the Oakland County Circuit Court's Summary

Disposition Opinion and Order (attached to the Library's brief at A-1) and the Court of Appeals' opinion.

STANDARD OF REVIEW

The Court invited briefing on an issue of constitutional construction, which is subject to review de novo. *Wayne County* v *Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004). The same standard applies to other issues of law. *Cardinal Mooney High School* v *Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991). In *Hathcock*, *supra*, this Court explained:

> "The primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. This rule of "common understanding" has been described by Justice Cooley in this way:
>
> "'A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. "For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed."'
>
> "In short, the primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified." 471 Mich at 468 (footnotes omitted).

ARGUMENT

I. THE CIRCUIT COURT AND COURT OF APPEALS CORRECTLY RULED THAT CONST 1963, ART 8 § 9 ALLOWS THE LIBRARY TO PERMIT A NONRESIDENT TO BORROW BOOKS ONLY IF THE NONRESIDENT'S COMMUNITY HAS A CONTRACT WITH THE LIBRARY.

Const 1963, art 8, § 9 relevantly provides:

> "The legislature shall provide for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof."

In accordance with this provision, the Library is available for use by nonresidents; however, only those nonresidents whose communities have signed a services contract with the Library may borrow books from the Library. Plaintiff challenges this policy, contending that the phrase "available to all residents of the state" means that there is a "constitutional right to borrow books" (Application for Leave to Appeal, p 13). Plaintiff acknowledges; however, that libraries may adopt rules and regulations. Id.

As indicated above, the primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. Hathcock, supra, 471 Mich at 468. The Court may also look to the purpose sought to be accomplished and the circumstances leading to the provision's adoption. *Kearney* v *Board of State Auditors*, 189 Mich 666, 673; 155 NW 510 (1915). To do so, the "Address to the People" and the convention debates may be consulted. *Regents of the University of Michigan* v *Michigan*, 395 Mich 52; 235 NW2d 1 (1975).

Const 1963, art 8, § 9 revised Const 1908, art 11, § 14. The 1908 Constitution unrealistically, and unsuccessfully, sought to require a library in every community. The 1963

Constitution recognized that library services could best be provided by preserving local libraries and allowing them to expand their services through local rules. The Address to the People explained:

> "This is a revision of Sec. 14, Article XI, of the present constitution which decrees that 'the legislature shall provide by law for the establishment of at least one library in each township and city.' This has never been adhered to as a matter of practice.
>
> "The proposed new language emphasizes that 'public' libraries will be 'available' to residents without fixing how or where libraries shall be organized. Reasonable rules for the use and control of their facilities may be adopted by the governing bodies of the libraries." 2 Official Record, Constitution Convention 1961, p 3397 (Appendix 2).

The Constitutional Convention debates similarly reflect that Const 1963, art 8, § 9 did not provide a constitutional right to borrow books, as Plaintiff proposes. Instead, the provision was designed to broadly support the availability of libraries, while leaving the nature of that availability to local control. The committee on education's initial proposal did not include specific language on local control, yet the committee clearly intended it, explaining:

> "The present language emphasizes that 'public' libraries will be 'available' to residents without fixing how or where the libraries themselves shall be organized. *The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books.*
>
> "Under this proposal present libraries will be retained. But to make libraries more available to the people, their services may be expanded *through cooperation, consolidation, branches and bookmobiles.*" 1 Official Record, Constitutional Convention 1961, p 822 (emphasis provided) (Appendix 1).

Delegate Leibrand offered an amendment to delete the phrase "which shall be available to all residents of the state" because he was concerned that the new language might be interpreted unwisely and contrary to its intent (as Plaintiff now proposes):

> "Mr. Chairman and fellow delegates, I rise to speak to the purpose of this amendment. By implication at least, the phrase, 'which shall be available to all residents of the state' means to me that the service of any library shall be available, free, to all residents of the state, or at least be available to everyone on the same terms as offered to the residents of the municipality which operates the library. Now, I feel that this may very well place an undue burden upon existing libraries.
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> "I don't think any library would object to permitting a tourist or a traveling salesman to come into its reading room and look at a magazine or two, but the business of providing full time library service, with the circulation of books, is, as I say, an undue burden.
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> ***
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> "So, I feel that there is a danger in the language that I seek to delete." Id. at 834.

Delegate Bentley replied that the "committee [on education] believed that this provision should be in this respect as broad and general in scope as possible" and that "obviously we recognize that there must be qualifications, there must be reservations, there must be individual problems that must be met." Id at 835. Delegate Andrus added: "One of the first problems that came up was, people said, 'we don't want to have to pay for our library and then have other people use it.' We don't mean that by this language." Id.

The Constitutional Convention debates specifically addressed libraries having funding contracts with surrounding communities (which is essentially the basis for this litigation). Delegate Leibrand expressed concerned, as a member of the board of trustees of the Bay City

public libraries, because municipalities adjoining Bay City wanted free library service. Id at 834. He noted that some of the municipalities had entered into contracts, and was concerned that there would be no ability to obtain a contract if free service were required. Id at 835. Delegates Andrus and Follo responded that the provision said "available," not "free," and that there was no sound basis for a contrary position. Id.

Delegate Leibrand specifically inquired whether libraries could continue to make contracts with other municipalities. Delegate Bentley replied that there was no intent to change the existing ability of libraries to make such contracts. Id. He explained that the "committee on education felt that a broad, general statement of encouraging the extension of library services throughout the state to all of its residents, through various media, would be helpful, useful and timely to place in the constitution," but "so far as working out the rules for individual libraries to govern the use and control of their books, the committee felt that this matter was and should be statutory." Id. He added that the provision for availability would not enable a person to demand library services contrary to local library regulations. Id at 836.

Despite the above-described intent of the committee on education's original proposal, Delegates Higgs and Dehnke shared Delegate Leibrand's concern that the proposal's language might be misinterpreted. Accordingly, Delegate Dehnke presented an amendment to add "under reasonable regulations" to follow "which shall be available to all residents of the state. Delegate Leibrand withdrew his amendment to delete the latter phrase. Delegate Kuhn opposed the amendment, asserting that the committee's intent was already clear, and explaining that local regulations, including library funding contracts with other communities, would remain permissible:

> "Just because we say it is available doesn't mean there are no standards . . .
>
> "I would like to answer Judge Leibrand's questions. Can he make these contracts? The answer is yes, without question he can make these contracts. We are not changing any of that. We don't want anybody to think we are. The fact that we say they shall be available to the people of the state of Michigan is just a broad, general statement." Id at 836.

Despite the delegates' clear intent with respect to the proposal, as well as their desire to minimize constitutional language, they adopted the "under reasonable regulations" amendment in an abundance of caution and to provide guidance to any court. Id at 836-37.

The committee on style and drafting struck "reasonable" and added, "adopted by the governing bodies thereof." Delegate Bentley described, and Delegate Gadolo confirmed, that the intent of these final changes was to expressly permit local regulations, particularly with respect to book borrowing by a resident of another community (such as Plaintiff):

> "the intent of the committee on style and drafting would be that local governing bodies of these various public libraries would be able to pass reasonable regulations regarding the accessibility and the availability of their individual libraries to residents of the state; **particularly, I suppose, in cases where the applicant for a book or a periodical was not an immediate resident of the locality.**" 2 Official Record, Constitutional Convention 1961, p 2561 (Appendix 1, emphasis added).

The completed Const 1963, art 8, § 9 was then presented to the people, with the Address to the People (relevantly quoted above) reflecting the same intent for local governing bodies of libraries to adopt "reasonable rules for the use and control of their facilities." Thus, there is no merit in Plaintiff's assertion of a constitutional right to borrow books. Instead, the delegates to the constitutional convention repeatedly and expressly rejected the position that Plaintiff asserts. Moreover, they recognized the dangers of such a misinterpretation of the Constitution, and

therefore expressly limited the general statement of "availability," to be "under regulations adopted by the governing bodies" of libraries.

The Court of Appeals correctly rejected Plaintiffs position, explaining that it was contrary to Const 1963, art 8, § 9's language:

> "The specific language of Const 1963, art 8, § 9, reveals a clear intent that libraries 'be available to all residents of the state . . . But this mandate is not without restrictions in that libraries are authorized to impose 'regulations adopted by the governing bodies thereof.' Thus, a library is imbued with the discretion to adopt regulations pertaining to the library's governance, functioning, and management of its resources. This language does not coincide with plaintiff's interpretation of the provision to mean unfettered or free access." Goldstone, supra, 268 Mich App at 647.

The Court of Appeals also thoroughly analyzed the history of Const 1963, art 8, § 9 (essentially set forth above) and properly rejected Plaintiff's position as unsupported. *Goldstone, supra*, 268 Mich App at 649-52. The Circuit Court similarly relied on this history in rejecting Plaintiff's challenge to the Library's policy, explaining:

> "After careful review of the circumstances surrounding the adoption of Article 8, § 9, the Court finds that it did not vest the citizens of Michigan with new constitutional rights. It is clear that the delegates only intended to provide communities with an alternative to building their own libraries. They did not intend to take from local libraries the right to control the circulation of their materials.
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> "Therefore, the Court finds that "available" as used in Article 8, § 9 means access that is subject to the regulation of the library's governing body. In this case, Defendant has decided to issue borrowing privileges to nonresidents only pursuant to a contract with the nonresident's community. The Court finds that this decision is not unconstitutional under Article 8, § 9 of the Michigan Constitution." (Library brief, A-4 to A-5).

The Oakland Circuit Court and Court of Appeals properly rejected Plaintiff's position as contrary to Const 1963, art 8, § 9's language, history and intent. There is absolutely no merit in Plaintiff's misinterpretation of the law.

Plaintiff's position should also be rejected as a matter of policy. Michigan libraries are now open and accessible to Michigan's citizens, just as the drafters and ratifiers of the Constitution intended. Indeed, the well-reasoned constitutional language has allowed for the creation of more and better libraries, as well as the provision of increased services (e.g., computer and internet) to Michigan's citizens. The system works. Plaintiff seeks to break it.

If the law were changed to conform to Plaintiff's position, then the ability of Michigan's libraries to make their services available to Michigan residents would be undermined. Plaintiff's position on "availability" (in addition to being legally incorrect) defies reality because actual "availability" depends on funding. Libraries depend primarily on local taxpayers, with some funding by contracts with surrounding communities.[1] The delegates to the Constitutional Convention specifically recognized that library funding contracts must be maintained, and developed language for Const 1963, art 8, § 9 to preclude the type of misinterpretation that Plaintiff proposes. The delegates' concerns are just as important today (if not more important) as they were when those concerns shaped the constitutional language under review. Library funding contracts continue to be essential so that libraries can make their services "available" to Michigan residents. It would be impossible for a library to obtain a funding contract to provide services, if the library were required to provide those services for free as a matter of law. Local taxpayers are unwilling to pay subsidies to have their local libraries provide services to non-

[1] Some additional sources of funding are discussed in Argument II below.

residents. Without funding, library services cannot continue to be available. Therefore, MLA urges this Court to reject Plaintiff's position, and uphold Michigan's long-established and properly-functioning library funding system.

II. WELL-ESTABLISHED STATUTES CONFIRM THAT LOCAL LIBRARIES HAVE THE RIGHT TO CONTROL THE CIRCULATION OF THEIR MATERIALS.

The Court's directive for supplemental briefing can be read broadly with respect to the scope of the Court's constitutional inquiry. The Circuit Court, for example, found that its constitutional interpretation was supported by legislation (Library brief, A-4). Therefore, to the extent that this Court might be interested, the MLA offers the following discussion further explaining that Const 1963, art 8, § 9 did not provide new rights to individuals, but it did direct the Legislature to "provide for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof." The Legislature has fulfilled this directive through statutes making library services available all Michigan residents.

For example, in the year following the adoption of the 1963 Constitution, the Legislature enacted the Distribution of Penal Fines to Public Libraries Act, 1964 PA 59, MCL 397.31 *et seq*, which authorizes library services contracts and allocates penal fine monies (which help to fund libraries), based on the existence of those contracts:

> "In any county where there is no public library, or in any county within the boundaries of which there are municipalities which have not established public library service or which do not maintain public libraries, the county board of supervisors shall appoint a county library board to receive the per capita portion of penal fine moneys to be allocated for such areas ... *The board may contract with a qualified public library, within or without the county, to provide public library service for all residents of the county*

without legal access to a public library." MCL 397.33 (emphasis provided).

* * *

"If any municipality within a county has not established a public library *but is contracting for public library service with the governing body of a legally established public library*, it is entitled to receive its per capita share of the penal fine moneys the same as if it had a legally established public library. The moneys shall be used for the provision of public library service for all residents of the municipality. MCL 397.35 (emphasis provided).

The debates at the Constitutional Convention (discussed above) also reflect the delegates' intent to maintain the then-existing ability of libraries to enter contracts with surrounding communities. For example, the Regional Libraries Act, 1931 PA 250, MCL 397.151 *et seq*, authorizes libraries to enter into contracts to provide service to nonresidents:

"The board of trustees of each regional library so established shall have the following powers:

* * *

(f) To enter into contracts to receive service from or give service to libraries within or without the region and to give service to municipalities without the region which have no libraries." MCL 397.155.

The District Library Establishment Act, 1989 PA 24, MCL 397.172 *et seq*, similarly authorizes libraries to enter into contracts to provide service to nonresidents:

"A [district library] board may do 1 or more of the following:

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(g) Enter into a contract to receive library-related service from or give library-related service to a library or a municipality within or without the district." MCL 397.182.

The Public Libraries Act, 1952 PA 52, MCL 397.471 *et seq*, provides for libraries to efficiently extend library services through contracts with other libraries and with municipalities, which pay for those services:

> "The officers, agency or other authority charged by law with the maintenance and operation of any library for general public use *may enter into and perform contracts or arrangements with the officers, agency or other authority likewise charged in respect of any other such library for cooperation and coordination in the maintenance and operation of the libraries to avoid unnecessary duplication and at the same time promote the widest public use of books, manuscripts and other materials and facilities* and bring about the supplementing of the 1 library by the other, which may include the accumulating of books, manuscripts and other materials and facilities, to whichever library belonging, of the same general nature or pertaining to the same general subject in such library as will best facilitate access thereto and promote the best use thereof by the members of the public desiring so to do.
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> "The officers, agencies or other authorities, jointly or severally, *may enter into contracts or arrangements* to make available to political subdivisions of the state, including school districts, otherwise authorized by law to maintain libraries, such library services and facilities as will promote the widest public use of books and avoid unnecessary duplication and expense." MCL 397.471
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> "Such contracts and arrangements may be made between and among any number of such libraries. Any library supported in whole or in part by taxes or other public funds or competent in law to be so supported shall be eligible to be included in any such contract or arrangement by whatever authority such library may be maintained and operated. Residents of the territory subject to taxation for support of any library entering into any such contracts or arrangements shall have such rights and privileges in the use of the respective libraries entering into like contracts and arrangements as shall be provided therein. If the expenditures generally of such library shall by the law under which maintained and operated be subject to being budgeted and approved, any

> expenditure by such library required for carrying out any such contract or arrangement shall be likewise so subject.
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> "The provisions hereof shall be broadly and liberally construed and applied and any provision in any contract or arrangement reasonably tending to effectuate in any part the intents and purposes hereof shall be deemed within the authority hereby granted. Any political subdivision of the state, including school districts, now or hereafter authorized by law to establish or maintain libraries or library services, may enter into contracts or arrangements for library services and facilities provided in [MCL 397.471] and provide for the payments of obligations arising from such contracts or arrangements by resolution of the legislative body of the political subdivision or school district or in any other manner provided by law." MCL 397.472.

The City, Village and Township Libraries Act, 1877 PA 164, MCL 397.201 *et seq*, specifically provides for a municipality (such as Bloomfield Hills, where Plaintiff lives) to obtain library services through a contract with an adjacent municipality (such as Bloomfield Township, where the Library is located):

> "Notwithstanding a contrary city, village or township charter provision, a township, village or city adjacent to a township, village, or city that supports a free public circulating library and reading room under this act may contract for the use of library services with that adjacent township, village, or city" MCL 397.213(1).
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> * * *
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> "Notwithstanding any contrary provision in a township, city, or village charter, the library board of directors of a township, city, or village supporting and maintaining a free public circulating library and reading room under this act, or under any special act, may enter into a contract with another township, city, or village to permit the residents of that other township, city, or village the full use of the library and reading room, upon terms and conditions to be agreed upon between the library board of directors and the legislative body of the other township, city, or village . . .." MCL 397.214 (2).

The County Libraries Act, 1917 PA 138, MCL 397. 301 *et seq*, similarly authorizes contracts for library services, and includes provisions to pay for those services:

> "The board of supervisors of any county shall have the power to establish a public library free for the use of the inhabitants of such county and they may contract for the use, for such purposes, of a public library already established within the county, with the body having control of such library, to furnish library service to the people of the county under such terms and conditions as may be stated in such contract. The amount agreed to be paid for such service under such contract and the amount which the board may appropriate for the purpose of establishing and maintaining a public library shall be a charge upon the county and the board may annually levy a tax on the taxable property of the county, to be levied and collected in like manner as other taxes in said county and paid to the county treasurer of said county and to be known as the library fund." MCL 397.301
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> * * *
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> "Any county possessing a county library or any board of trustees of a regional library may enter into a contract with 1 or more counties, townships, villages, cities and/or other municipalities to secure to the residents of such municipality such library service as may be agreed upon, and the money received for the furnishing of such service shall be deposited to the credit of the library fund. Any municipality contracting for such library service shall have the power to levy a library tax in the same manner and amount as authorized in section 1 hereof for the purpose of paying therefore. Any municipality contracting for such library service may at any time establish a public library free for the use of its inhabitants, whereupon its contract for said service may be continued or terminated on such terms as may be agreed upon between the parties thereto." MCL 397.305.[2]

Finally, the State Aid to Public Libraries Act, 1977 PA 89, MCL 397.551 *et seq*, provides for library services contracts:

> ""The cooperative [library] board shall do all of the following:

[2] *See also*, MCL 397.214(1) with respect to a township library fund.

***

> (g) Enter into contracts to receive service from or give service to libraries in the state, including public, school, academic, cooperative, or special libraries, and political subdivisions of the state." MCL 397.558(2)(g).

Through these Acts, the Legislature has (1) maintained the ability of libraries to provide services through contracts with municipalities, and for municipalities to pay for those services (as the delegates to the Constitution Convention intended), and (2) fulfilled its constitutional directive to make library services available, through additional contractual and funding provisions that foster cooperation and coordination among libraries and municipalities. It bears emphasis that all of the Acts discussed above include mechanisms for a library to provide services to nonresidents by contract with that nonresident's municipality. Radically changing the established law to conform to Plaintiff's position would effectively make each of these statutory provisions void, because (as the delegates to the Constitutional Convention recognized), nobody would enter into a contract to pay for library services if the services must be provided in any event.

Plaintiff's offer to pay an individual book-borrowing fee is specious, at best. A library may charge such a fee to recover some costs[3]. More significantly, however, a library is entitled to

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[3] The State Aid to Public Libraries Act permits, but does not require, libraries to charge nonresident borrowing fees to individuals residing outside the service area. MCL 397.561a provides:

> "A library *may* charge nonresident borrowing fees to a person residing outside of the library's service area, including a person residing within the cooperative library's service area to which that library is assigned, if the fee does not exceed the costs incurred by the library in making borrowing privileges available to nonresidents including, but not limited to, the costs, direct and indirect, of issuing a library card, facilitating the return of loaned materials, and the attendant cost of administration" (emphasis provided).

control its materials. Library services contracts allow the library to maintain that control by facilitating the library's ability to ensure that lent materials are returned, and that enforcement mechanisms are procedurally manageable.[4]

CONCLUSION AND RELIEF REQUESTED

Public libraries are available to all Michigan residents under Const 1963, art 8, § 9. Plaintiff has access to any library in the State of Michigan, but that access is subject to the library's regulations. There is no merit in Plaintiff's assertion of a constitutional right to borrow books, since the Constitution plainly states that libraries shall be available "under regulations adopted by the governing bodies thereof." The Oakland Circuit Court and Court of Appeals correctly held that the Library's policy is in accord with Const 1963, art 8, § 9's plain language, as well as the intent of people who ratified it. The delegates to the Constitutional Convention specifically considered the possibility of Plaintiff's misinterpretation, and revised the Constitutional language to expressly preclude the position that Plaintiff asserts. Plaintiff's proposal to change the law is also contrary to well-established and essential public policy. Libraries need the ability to enter into contracts with municipalities in order to obtain funding that is necessary to make library services "available" to Michigan residents. Therefore, the MLA respectfully requests that this Court deny Plaintiff's application for leave to appeal.

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[4] Manageability includes considerations such as the library's proximity to the borrower. A contract between a library and an adjacent municipality can account for the likelihood and ease of materials being returned by, or recovered from, nearby residents. Attempting to account for such matters on an individual basis across Michigan would likely require safeguards similar to those used for credit cards. Moreover, Plaintiff essentially takes the position that libraries may obtain only nominal funding for specific services from nonresident individuals. Libraries are nonprofit, and would have to institute expensive cost accounting systems if they were forced to track costs for each service provided to nonresidents, as Plaintiff proposes.

Respectfully submitted,

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Dated: June 2, 2006

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